

MAINE PUBLIC UTILITIES COMMISSION

ELECTRIC UTILITY INDUSTRY RESTRUCTURING
Docket No. 95-462

DRAFT PLAN
July 19, 1996

Chairman Thomas L. Welch
Commissioner William M. Nugent
Commissioner Heather F. Hunt

EXECUTIVE SUMMARY

On July 3, 1995, Legislative Resolve 1995, ch. 48 "Resolve to Require a Study of Retail Competition in the Electric Industry" became Maine law. The underpinning of the Resolve is that broader market competition and customer choice in the electric market will be more beneficial to the public than will continued regulation. A central question of the Resolve is how to facilitate development of a competitive market in the retail purchase and sale of electric energy consistent with the public interest.

The Resolve directed the Commission to construct a plan for the Legislature's consideration to achieve retail market competition for the purchase and sale of electric energy in Maine. The draft represents the Commission's preliminary view on how to restructure the electric utility industry to allow Maine consumers choice in purchasing electric capacity and energy.

Today, we advance a general description of a market structure which fundamentally challenges the historical method of delivering, purchasing and regulating the provision of electric services. We embrace competition and consumer choice and advocate cautious implementation.

We encourage comment and criticism to assist our development of a more matured plan that we will submit to the Legislature in December. That report will include an analysis of the Paradigm submitted to the Legislative Work Group, of why we prefer the

recommended course over other proposals in this proceeding, and proposed legislation which would, if enacted, authorize the Commission to implement the final recommendation.

During the next five months, we will actively solicit comment on the draft from residential consumers, businesses, utilities, legislators, government agencies, municipalities and others. We explicitly request all interested persons to express their views on our goals, our proposed means to reach those goals and to suggest alternatives. In addition, we have highlighted discrete issues which, in our view, require further information.

In broad outline, we recommend that:

- As of January 2000, all Maine consumers would have the option to choose an electric power supplier.
- As of January 2000, Maine would not regulate as public utilities companies producing or selling electric power.
- Regulated public utilities would continue to provide electric transmission and distribution services.
- As of January 2000, Maine's largest electric utilities would be required to structurally separate their generation assets and functions from transmission and distribution functions (T&D). The Commission would require the large utilities to divest themselves of generation assets by 2006. The Commission would not require municipal utilities and electric cooperatives to separate, nor to divest, generation.
- Existing contractual obligations with qualifying facilities (QFs) would remain with the T&D companies. T&D companies would periodically sell to the highest bidders the rights to market the power associated with QF contracts. The lawful obligations of the QF contracts would not be modified.

- Standard offer service, at a price no higher on average than available in 1999, would be available to customers who elect not to choose an alternative generation provider, and for customers who cannot obtain service on reasonable terms from the market.
- The Commission recommends the Legislature fund low-income assistance programs through the general fund or by an equitable tax or surcharge on all energy sources. In the alternative, low-income programs would continue to be funded through the rates of the T&D companies.
- All retail providers of generation would be required to supply some of their product from renewable sources; retail providers could satisfy this obligation with tradable credits.
- Conservation and load management programs would be funded through the rates of the T&D companies.
- Utilities would have a reasonable opportunity to recover generation-related costs stranded as a result of retail access.
- The Commission would work to ensure that the regional bulk power market is structured to maintain reliability and to advance fair and efficient competition.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I.	INTRODUCTION	1
II.	RETAIL ACCESS	4
	A. <u>Timeframe for Retail Access</u>	5
	B. <u>Customer Options</u>	8
	C. <u>Reciprocity</u>	9
III.	INDUSTRY STRUCTURE	9
	A. <u>Overview</u>	9
	B. <u>Separation and Deregulation of Generation</u>	12
	1. <u>Separation Process</u>	12
	2. <u>Deregulation and Remaining Oversight</u>	14
IV.	STANDARD OFFER	16
	A. <u>Need for Standard Offer Service</u>	16
	B. <u>Terms and Conditions of the Standard Offer</u>	18
V.	CUSTOMER PROTECTION	21
	A. <u>Transmission and Distribution Utility</u>	21
	B. <u>Standard Offer</u>	21
	C. <u>Competitive Providers</u>	22
VI.	LOW-INCOME ASSISTANCE	23
VII.	ENERGY POLICY AND THE ENVIRONMENT	25
	A. <u>Overview</u>	25
	B. <u>Renewable Energy Resources</u>	27
	1. <u>Minimum Renewable Supply Requirement</u>	27
	2. <u>Customer Choice</u>	28
	C. <u>Conservation and Load Management</u>	28

D.	<u>Long-term Resource Planning and Certification of Need</u>	29
E.	<u>Air Emission Standards</u>	29
VIII.	STRANDED COSTS	31
A.	<u>Overview</u>	31
B.	<u>Cost Recovery by Utilities</u>	33
C.	<u>Determining Stranded Costs</u>	36
D.	<u>Recovery Mechanism</u>	37
IX.	REGIONAL ISSUES	38
A.	<u>Overview</u>	38
B.	<u>Reliability</u>	40
C.	<u>Market Functioning and Market Structures</u>	41
1.	<u>Independent System Operator (ISO)</u>	41
2.	<u>Transmission Access</u>	41
3.	<u>Power Exchange</u>	42
4.	<u>Governance Issues in NEPOOL Reform</u>	43
D.	<u>Horizontal Market Power Study</u>	44

I. INTRODUCTION

This document advances the Commission's draft plan for electric utility industry restructuring in Maine. An outline of the plan is attached.

Legislative Resolve 1995, ch. 48 "Resolve, to Require a Study of Retail Competition in the Electric Industry" became law on July 3, 1995. Through the Resolve, the Legislature directed the Commission to begin to study restructuring Maine's electric utility industry no later than January 1, 1996, and to submit a report to the Legislature by January 1, 1997. The Commission initiated the study through a Notice of Inquiry dated December 12, 1995. To obtain the proposals and views of various stakeholders, the Commission solicited and received written comments. Twenty-two parties filed initial comments and 11 filed responsive comments.¹ The Commission held roundtable discussions with various interest groups. To engage the public, the Commission conducted four public hearings throughout the State, issued periodic restructuring bulletins and conducted an informal, admittedly unscientific, survey to help evaluate consumer preferences.

¹The commenters are as follows: Alliance to Benefit Consumers; American Association of Retired Persons; Bangor Hydro-Electric Company; Beaver Wood Power Project; Brassau Hydro Electric Limited Partnership, Greenville Steam Company and Wheelabrator Sherman Energy Co.; Central Maine Power Company; Coalition for Sensible Energy; Conservation Law Foundation; Eastern Maine Electric Cooperative; Enron Capital & Trade Resources; Independent Energy Producers of Maine; Industrial Energy Consumer Group; Madison Paper Industries; Maine Association of Interdependent Neighborhoods; Maine Municipal Utility Group; Maine Public Service Company; Municipal Review Committee; National Independent Energy Producers; Office of Policy and Legal Analysis; Office of the Public Advocate; Regional Waste Systems; and Rippling Water Enterprises.

This draft plan follows careful consideration of the positions and arguments articulated by various parties throughout this process, and study of activities in other states and the vast literature on industry restructuring.

The Commission's draft is preliminary.² It represents the Commission's tentative views on how to restructure the electric utility industry in Maine consistent with the public interest. We explicitly request comment on the goals, the proposed means to achieve the goals, and constructive suggestions to achieve the goals by other means. Written comments are due August 30, 1996. Responsive comments are due September 13, 1996.

The following fundamental principals guided the Commission's recommended path to achieve retail access by the year 2000:

- Where viable markets exist, market mechanisms should be preferred over regulation and the risk of business decisions should fall on investors rather than consumers.
- Consumers' needs and preferences should be met with the lowest societal costs.
- All consumers should have a reasonable opportunity to benefit from a restructured industry.
- Industry restructuring should not diminish environmental quality, compromise energy efficiency, or jeopardize energy security.
- All consumers should have access to reliable, safe, and reasonably priced electric service.

²Because of the preliminary nature of the plan, the discussion in this document is not intended to be comprehensive. The purpose of this document is to explain the rationale for the provisions so that interested persons can comment constructively.

- Industry restructuring should not diminish low-income assistance or other protection to less well situated customers.
- The industry structure should be understandable to the public, fair and perceived to be fair, and lawful.
- Industry restructuring should improve or maintain Maine's business climate.

The Commission believes the draft comports with these fundamental principals and approaches industry restructuring in a manner that is viable, efficient and in the public interest.

However, at this time, the question of whether any restructuring plan will ultimately benefit the public cannot be answered definitively. While, over time, industry restructuring and increased customer choice may lower electric rates and encourage technological innovation, neither qualitative nor quantitative analysis will prove with certainty that retail access will in fact reduce the total costs of producing and providing electricity or whether all customer groups will benefit from those cost reductions. Similarly, no tool exists to determine with certainty whether competition among generation providers will tend to decrease the reliability of the electric grid. Nor can it be predicted with certainty whether sufficient markets will develop to avoid anti-competitive behavior or undesirable variations in prices. Moreover, it is not yet clear whether the public wants the responsibilities and risks a restructured industry will introduce. Finally, the move to competition will almost certainly require different government structures to execute current policies or protections the

Legislature may elect to preserve, such as siting control.

In light of these uncertainties, the Commission advocates a cautious, deliberate and orderly approach to restructuring. The Commission believes this proposal embodies such an approach and meets the Resolve's call for consumer choice by the year 2000.

In the December report, the Commission will submit a thorough discussion of all components of the final recommendation, an analysis of the Paradigm, discussion of why the Commission prefers the final recommendation over other proposals submitted in this proceeding, a comprehensive discussion of the issues articulated in Section 2 of the Resolve, and proposed legislation that would, if enacted, provide the authority and direction for the Commission to implement the final recommendation.

II. RETAIL ACCESS

The Commission proposes all customers have the opportunity to choose a competitive provider of generation services³ as of January 2000. There should be no restrictions on customer aggregation for purposes of purchasing generation services: customers should be allowed to voluntarily aggregate in any manner they elect. Reciprocity based on retail access in other

³In this document, the terms "competitive providers" and "generation providers" refer to generators, marketers, brokers, aggregators, or any other entity producing or selling electric power. Generation services refer to the provision of electric capacity or energy as distinct from transmission and distribution services (i.e., system access); the latter will continue to be provided by a regulated entity.

states or Canadian provinces should not be a prerequisite for competitive providers serving Maine's retail market.

A. Timeframe for Retail Access

Beginning retail access in the year 2000 offers several advantages. First, it would afford Maine an opportunity to observe successes and failures in other states, facilitating a more accurate assessment of whether retail access generally benefits all consumers. Specifically, some New England states intend to implement retail access, for some or all customers, in 1998. Consequently, a later timeframe should provide the opportunity to assess whether viable markets develop to serve diverse retail customers and whether the mechanics necessary for retail access may be reasonably designed and implemented.

A 2000 start date would also allow critical regional initiatives to be completed and tested. Such initiatives include the creation of an independent system operator (ISO) of the transmission grid, an agreement on rules regarding transmission access and pricing, and the reform of NEPOOL to include new market participants. Successful execution of regional changes is a necessary precondition to fair and effective competition in Maine.

Beginning retail access in 2000 also provides significant benefits for addressing stranded costs. Even within a few years, the magnitude of strandable costs in Maine will diminish, perhaps significantly. This should lessen the controversy over stranded cost recovery to some degree, and, more

importantly, minimize the risk of projecting and calculating such costs erroneously. The greatest calculational risk in determining stranded costs is estimating the market value of utility generation assets and power contracts. A later timeframe should provide an opportunity to observe actual transactions in the emerging markets (i.e., sale of energy and capacity, and physical generation assets) that may better inform stranded cost determinations. Also, because litigation over stranded cost recovery is a possibility, a later start date may allow Maine to watch costly litigation in other jurisdictions before committing to a specific stranded costs treatment. That experience could reduce the potential for delay and uncertainty inherent in litigation in Maine.

Another advantage to beginning retail access in 2000 is to allow consumers time to become educated about their role in a restructured industry. The success or failure of a new model will not turn on whether a few will navigate well through a proliferation of choices, options and services, but rather on whether the public is able to do the same. In short, ratepayers must become effective consumers for choice to be meaningful. That will take time and considerable effort.

Significantly, the Commission should periodically review the provisions of the proposal before initiating retail access so that it may modify implementation, if necessary. Periodic reviews and continued consideration of implementation details are important because restructuring efforts in other

jurisdictions and in the region may reveal myriad unforeseen issues that require specific action to protect the public interest.

Beginning retail access in 2000 is not without risk. The principle risk is that consumers will receive the potential benefits of retail choice, either real or perceived, later than in other jurisdictions. It is unlikely that any jurisdiction will see substantial and immediate rate reductions because of retail access absent some form of cost-shifting.⁴ However, if there are significant immediate benefits from retail access achieved by another means elsewhere, Maine should, and could, accelerate retail choice.

Finally, restructuring in 2000 corresponds with the conclusion of Central Maine Power Company's (CMP) Alternative Rate Plan (ARP) and its 5-year contracts with its large industrial customers. Thus, coordinating the end of the ARP and the contracts with the beginning of retail choice would obviate the need for complex regulatory proceedings that would arise in the event retail choice began later. Similarly, the year 2000 generally coincides

⁴The public benefits from enhanced competition in retail markets are likely to come from innovation and efficiencies over time as new plants are constructed and markets and services are developed to meet individual customer needs. The shifting of costs from ratepayers to shareholders or among ratepayer groups is in no sense an "efficiency gain" from competition, but rather simply a transfer of dollars from the pockets of some individuals to the pockets of others.

with Maine Public Service's (MPS) current rate plan and Bangor Hydro-Electric's (BHE) pricing flexibility plan.

B. Customer Options

All customers should be able to choose alternative generation providers beginning January 2000. Allowing all customers, regardless of size, type or location, choice at the same time is equitable and would bring the full benefits of restructuring to Maine sooner than a stepped approach. To the extent that allowing choice on a nondiscriminatory basis to all customers at once presents logistical problems for the utilities, that challenge may be offset by additional years to prepare. The Commission invites comment on whether providing retail choice for all customers is workable, and on any equitable alternatives.

The Commission recommends no restrictions on the type of retail access. Customers should be able to enter bilateral contracts with competitive providers for any duration and should be able to purchase on a shorter term "spot market." The Commission requests comment on whether this approach calls for special meters or other provisions to measure or estimate load.

Further, customers should be allowed to aggregate at will. Prior to retail access, the state should educate consumers, customer groups and municipalities about the potential for aggregation to maximize the benefits of new opportunities. The absence of well-understood consumer options would obstruct effective competition.

C. Reciprocity

The Commission does not recommend that the allowance by other states or Canadian provinces of retail access in their jurisdictions be a condition for permitting providers from those states or provinces to enter Maine's retail market. The public interest would not be well served by depriving Maine consumers of diverse products and services of all competitive suppliers, from whatever location.

Utilities have asked for reciprocity as a means to mitigate stranded costs by marketing their generation in other locations. While the Commission supports this objective, it is unclear whether the ability to sell into a retail market, in addition to the present ability to sell into a wholesale market, will result in significant additional mitigation opportunities. Moreover, if Maine commences retail access after there is evidence of a viable, functioning market elsewhere, as the Commission advises, the issue of reciprocity is largely diminished. Last, a reciprocity requirement is at least arguably unlawful under the Interstate Commerce Clause of the Constitution.

III. INDUSTRY STRUCTURE

A. Overview

As of January 2000, the production and sale of electric capacity and energy should no longer be regulated as public utility services but instead be provided in an open market. To

ensure the market works effectively and efficiently, electric generation assets and related functions should be separated to the greatest extent possible from electric transmission and distribution (T&D). The large IOUs should separate the generation function from T&D services as described below.⁵

Ultimately, the large IOUs should fully divest unregulated generation assets and functions. Full divestiture would eliminate the IOUs' opportunities to exercise vertical market power and minimize incentives for self-dealing and cross-subsidization between regulated and unregulated affiliates. Full divestiture of generation is most conducive to fair competition among generation providers because it eliminates competitive advantages that might accrue to a generation provider by virtue of a T&D company affiliation. Divestiture is the most effective way to protect T&D ratepayers from the costs and risks that would likely exist if unregulated generation businesses were affiliated with the T&D company from which they took service.

The alternative to full divestiture is the creation of a structure in which unregulated generation companies are affiliated with regulated T&D companies. There are several problems with this approach which, on balance, render it inferior to divestiture. First, the incentives and opportunities for self-dealing and cross-subsidization to the affiliated generation company's benefit and the T&D ratepayers detriment would be

⁵The IOUs in Maine are CMP, BHE and MPS. The term large IOUs as used in this document refers to CMP and BHE.

significant, requiring strict rules and close regulatory oversight of the combined entity. Even with increased scrutiny, it may be impossible to fully protect T&D ratepayers from the risks. Second, T&D ratepayers could not be completely isolated from the risk of poor financial performance of unregulated affiliates. Third, competitive generating companies could pursue extensive litigation, at the Commission and in the courts, based on alleged anti-competitive activities associated with the affiliation. Finally, an affiliation could provide advantages to a generation company that might not be available to other generators. For example, an affiliated generation provider could have better access to data about customer loads and preferences than its competitors. Full divestiture would avoid such risks and the costs to reduce the attendant harm to consumers.

Because full divestiture is a significant task, utilities should have the opportunity to implement it over several years. A gradual approach mitigates the risk that divestiture would lead to a fire-sale atmosphere, that companies would have to sell assets into the current excess market, and that the market for generation assets would be flooded. Also, the IOUs should have flexibility as to the manner and specifics of divestiture so that they may accomplish the transactions to maximize the value of the assets and minimize transaction costs.

Although all service territories should be open to

retail competition, consumer-owned and municipal utilities should not have to separate generation assets from T&D. As those entities are small and own relatively insignificant amounts of generation, the benefits of separation are largely reduced or eliminated. The Commission requests comment on whether MPS should be required to divest its generation assets as described herein, by another method, or not at all.

Transmission and distribution assets need not be separated. Since transmission and distribution should remain regulated services, the benefits of separation may not justify the transaction costs. Moreover, there may be economies derived from the common ownership of both assets.

The lawful obligations associated with existing QF contracts should not be changed. Nothing inherent to restructuring requires such a change, or justifies the abrogation or involuntary modification of legally enforceable contracts. Therefore, existing contractual obligations between QFs and electric utilities should remain with the regulated T&D companies, preserving the contractual relationships between QFs and regulated utilities. As described below, the T&D companies should transfer the rights to market the capacity and energy produced by the QFs.

B. Separation and Deregulation of Generation

1. Separation Process

Utility owned generation and non-QF generation-related contracts (e.g., fuel and non-QF purchased

power contracts) should be separated from T&D in two steps. First, as of January 2000, all generation assets and related functions and all non-QF generation-related contracts should be transferred to entities structurally separated from the utilities' transmission and distribution businesses. Second, by January 2006, the large IOUs should divest all generating assets and non-QF generation-related contracts. The large IOUs should file plans with the Commission for review and approval, by a date certain, to achieve divestiture.⁶ Regulatory assets related to generation with no market value, such as Seabrook cancelled plant, should remain with the T&D company, as should nuclear plant decommissioning cost liability.

All rights and obligations associated with existing QF contracts should remain with the T&D company, except the rights to market the power output. Before January 2000, T&D companies should be allowed to continue to enter agreements to modify existing QF contracts. After this date, T&D companies could modify existing contracts, but should not extend the term of any contract or substantially increase purchases pursuant to any contract. This should provide QFs with an incentive to renegotiate contracts in the near term. Consistent with the other prohibitions on T&D companies proposed here, T&D companies

⁶Divestiture in this context refers to the legal separation or sale of generation assets so that the assets will be owned by an unaffiliated entity. This can occur through the sale of the assets or through a stock spin-off. The Commission takes no position at this time as to a preferred method to accomplish divestiture.

should not enter new contracts to purchase additional power from QFs after January 2000. The T&D companies should transfer the right to market the power associated with existing QF contracts in a series of competitive bidding processes. The first such bidding process should be completed to allow the transfer to be effective as of January 2000. To hedge against market risk, the T&D companies should resell these rights periodically in subsequent competitive bidding processes. The T&D companies should conduct, with Commission oversight, the RFP, bidding and selection process. The Commission invites comment on the period of time for which the rights to market the power should be transferred and on whether particular contracts or types of contracts, such as simultaneous buy-sell arrangements, present unique issues.

2. Deregulation and Remaining Oversight

As of January 2000, producers and marketers of electric power in Maine should not be regulated as public utilities. The Commission should have continuing but limited oversight of generation providers, centering on consumer protection and disclosure requirements. See Sections V and VII, below. The Commission should neither set nor regulate prices for electric generation. Rather, the market should determine prices except for the standard offer, discussed below. Similarly, the market should largely determine the types of energy resources

used to meet demand for electricity.⁷ Finally, the Commission would not approve or reject proposed new generating facilities within Maine. Accordingly, the Commission recommends that the Legislature consider whether state oversight of the siting of generation facilities, in some forum, may be necessary or appropriate.

C. Transmission and Distribution

Even in a restructured model with full retail access, transmission and distribution functions continue to have characteristics of natural monopolies. Thus, T&D service is best provided by a regulated utility. FERC will continue to regulate the terms and conditions for transmission service at the wholesale level, and some combination of federal and state regulation appears likely for transmission at the retail level.

The Commission should continue to regulate distribution service in a manner comparable to the current regulation of vertically integrated electric utilities.⁸ Distribution utilities ought to have exclusive franchises, and an obligation to provide system access and local power delivery services. The Commission should continue to set and regulate rates for

⁷The draft includes provisions to encourage the continued use of conservation and load management and renewable resources. See Section VIII below.

⁸There may be components of distribution service (e.g., metering) that could be unbundled and provided by competitive markets. Our plan neither proposes nor precludes any such unbundling of distribution services from occurring at some point in the future.

distribution service, most likely through performance-based regulation.⁹ The Commission should conduct a proceeding to establish the T&D companies' rates, for those services over which it will retain jurisdiction, before January 2000. The distribution IOUs (i.e., those required to divest generation) should not be permitted to own generation assets, enter power contracts except to modify existing QF contracts, or produce, market or sell electric capacity or energy after the year 2005.

Consumer-owned and municipal utilities should be able to buy and sell generation. To the extent those entities construct, own, purchase, or sell power, the Commission should regulate the investments and activities.

IV. STANDARD OFFER

A. Need for Standard Offer Service

As experience in the evolving telecommunications industry reveals, many consumers may not have the immediate ability or interest to elect alternative providers of services historically provided by a monopoly. Customers opting not to choose may predominate, at least initially, in the electricity market as well. Other customers, for financial or other reasons, may not be able to obtain service from a competitive provider on reasonable terms. Accordingly, there should be a standard offer service available on terms comparable to terms available prior to

⁹Performance-based regulation refers generally to multi-year price or revenue caps approaches as opposed to more traditional cost-of-service regulation.

January 2000 for those who elect not to choose an alternative supplier and to provide service for those who are unable to obtain reasonably priced service in a competitive market. A standard offer should be available as a choice during the transition to a fully competitive market and its need reevaluated as the market matures.

Standard offer service and the reasonable protection it offers to those who do not or cannot choose otherwise may be a necessary component for restructuring to be accepted by the public. A standard offer service would allow time for customers to adapt to changes and opportunities in electricity service and offer some assurance that restructuring will not put customers at great risk. To achieve that end, the terms of the standard offer should be relatively simple, understandable and bear a close relationship to current regulated rates.

To the extent feasible, the standard offer should provide the benefits of competitive pressure on rates to Maine's customers. That objective may be achieved through periodic competitive bidding, which should result in a standard offer provided through the market at the lowest possible cost. A bid mechanism would also avoid the creation of an uneven competitive environment that might occur if generation affiliates of T&D companies were automatically designated to offer the standard service.¹⁰

¹⁰As discussed below, a generation affiliate of a T&D company (that may exist until the year 2006) may bid to provide the standard offer service.

B. Terms and Conditions of the Standard Offer

The standard offer should be capped so that the cost of the generation service plus the regulated rates of the T&D service¹¹ will not, on average, be higher than the current bundled rates for electricity. A cap on the standard service would test the validity of claims that retail competition will benefit all customer groups. If the standard offer bids cannot satisfy this requirement, it may be evidence that the promised benefits of industry restructuring are illusory. If competitive bids for the standard offer service are above the cap, the Commission should have the authority to delay the start of retail access until it is reasonably determined that restructuring will not increase the total rates for electricity for what may be the majority of Maine's consumers.

The Commission should determine the standard offer's particular terms and conditions in a separate proceeding.¹² In general, each T&D company should administer and evaluate competitive bids according to terms and requirements established by the Commission. Thereafter, the Commission should review the bid process and finally determine the standard offer providers.

¹¹As discussed in Section VIII below, the regulated rates of the T&D companies may be redesigned as part of the restructuring process. To this extent, the rates of individual customers after restructuring may not be comparable or lower than the bundled rates for electricity prior to restructuring.

¹²In this proceeding, the Commission would also consider whether the cap should escalate at some inflation-based index or otherwise be adjusted on an annual basis.

The Commission proposes that standard offer service in each T&D service territory may be provided by different entities under terms unique to each. To allow some differences in the terms of the standard service encourages creative proposals, tailored to a territory's specific characteristics to serve consumers, better than a one size fits all package. That approach would also allow the Commission to evaluate the successes of various standard offers. The Commission asks for comment on whether and how a uniform standard offer might be preferable.

Before divestiture in 2006, a T&D company should be allowed to be affiliated with generation providers. Affiliated generation companies should be permitted to bid to provide the standard offer service through the year 2005. However, where a company participates in the bid process of its T&D affiliate, the Commission would increase scrutiny of the bidding and selection process to ensure that no entity bidding has an undue advantage.

As another means of providing a fair process, T&D companies should make public all relevant information on customer loads and usage characteristics. The Commission seeks comment on the type, extent and form of information appropriate and necessary for public disclosure and on customer expectations of confidentiality of such information.

For the standard offer to be effective serving those who cannot obtain service on reasonable terms from competitive

providers and to allow customers time to adjust to competitive options, it may be appropriate to allow customers the ability to enter and exit the standard offer unimpeded by restrictive policies, at least during a transition period. However, allowing every user of electricity unfettered freedom to enter and exit the standard offer may increase its cost. The Commission requests comment on appropriate and reasonable restrictions on the standard offer to balance these competing objectives.

Specifically, the Commission seeks comment on the following:

- * the terms for notice requirements for entering and exiting the standard offer and whether such requirements should differ among customer classes;
- * the exclusion of all or some larger customer classes from the standard offer based on larger customers' relative sophistication and given that inclusion of more customers may increase the cost of the service;
- * restrictions on the number of times a customer may enter and exit the standard offer, whether any such restrictions should differ among customer classes, and whether such restrictions would tend to lower the cost of the standard offer or encourage retail competitive markets for smaller customers;
- * imposition of a fee to reenter the standard offer once a customer has opted out;
- * imposition of a fee for a customer who reenters the standard offer due to disconnection for nonpayment to a competitive provider or who seeks to reenter the standard offer by deceptive consumer practices; and
- * imposition of an escalating fee to reenter the standard offer as the market matures.

The Commission welcomes comment or proposals on other requirements or restrictions on the standard offer.

V. CUSTOMER PROTECTION

A. Transmission and Distribution Utility

The Commission should continue to regulate the relationship between the T&D companies and their customers, including credit, collection, and disconnection practices. The Commission should also continue to serve as the forum to resolve customer complaints about or disputes with the T&D company.

T&D companies should have the authority, subject to Commission oversight, to disconnect customers for nonpayment of T&D charges or for nonpayment of standard offer charges. To allow disconnection in these cases would help prevent the accumulation of uncollected debt that could ultimately be passed on to other ratepayers. T&D companies should not, however, have the authority to disconnect customers because of non-payment of charges imposed by, or other disputes with, competitive providers. If generation providers are unregulated, they should face the same risks and employ the same methods of debt collection as other competitive businesses.

B. Standard Offer

The Commission should establish consumer protection measures to govern the standard offer. The standard offer is designed, in part, to ensure that generation service is available to customers unable to obtain services on reasonable terms from a competitive provider. To achieve that objective, the Commission

should establish terms and conditions for disconnection, credit, collection and other consumer interactions and complaints.

The standard offer would smooth the transition to, and promote customer acceptance of, a competitive market. At least initially, customers should not lose electric service because a competitive provider goes out of business or otherwise fails to serve its customers. Accordingly, the standard offer should serve as the provider of last resort for any customer whose competitive service provider terminates service. However, the Commission should protect the standard offer from customer abuse, such as falsifying identity for credit purposes.

C. Competitive Providers

Competitive generation should not be considered a public utility service, nor regulated as such. While generation should not be rate regulated, there should be limited regulatory oversight of competitive generators at least through a transitional period. Experience with competition in telecommunications suggests that the public wants, and indeed expects, some Commission oversight of new providers of competitive services. The public will reasonably expect the Commission to prevent abusive business practices, resolve disputes and be a source of information with respect to generation service.

All competitive providers, including generators, marketers, brokers, and aggregators should be subject to minimum

licensing requirements designed to ensure they have the financial and technical resources to fulfill their business obligations and customer commitments. In addition, the Commission might also protect consumers by governing notice provisions for rate increases, changes in service terms, termination of service and unfair business practices. To enable the Commission to perform those functions, competitive providers should file with the Commission schedules of rates, terms and conditions for products and services that are generally available. Bilateral contracts would not need to be filed. The Commission requests comment on the appropriate level of oversight of competitive providers and the creation of a Consumer Bill of Rights in a competitive market.

VI. LOW-INCOME ASSISTANCE

The needs of Maine's low-income citizens are independent of the structure of regulation; for that reason, the act of restructuring the industry should not itself reduce the availability of low-income assistance. Currently, CMP, BHE and MPS administer low-income assistance programs funded through utility rates. The percentage of total rates which fund low-income assistance is relatively small, amounting to approximately one half of one percent of total rates, or less than \$7 million per year.

The Commission strongly recommends that the Legislature fund low-income assistance programs either through general taxes or a tax or surcharge on all energy services. Under that approach, benefits would be available to support all energy sources.

The Commission recommends funding low-income programs through the tax system for several reasons. First, the tax system is a more equitable means of collecting funds than electricity use because general taxes are based on ability to pay rather than electricity consumption. Second, government agencies created to provide social services may administer low-income assistance programs more effectively than T&D companies, resulting in greater benefits from the same amount of dollars. Third, funding low-income assistance through electric rates raises electric rates relative to other energy alternatives, causing an uneven competitive environment among different energy sources. A tax or all-energy-source-funded program would correct that imbalance.

In the alternative, low-income assistance funds should be built into the T&D companies' rates, comparable in amount to the assistance in rates in 1999. The Commission would continue to oversee low-income programs much as it does today.

Even if low income programs continue to be funded through electric rates, restructuring presents an opportunity to correct a current inequity. Today, only CMP, BHE and MPS offer programs. Customers who reside in the service territory of municipal and consumer-owned utilities have neither the benefit nor the burden of the programs. All T&D companies should provide low-income assistance programs comparable (in terms of percentage of total revenue) to those offered by investor-owned utilities. Funds collected from the customers of each T&D company should flow to

customers in the same territory. The Commission solicits comment whether this approach would create equity concerns based on different income profiles of customers in different territories and on whether more extensive redesign of low-income support should be implemented.

Finally, customers who receive low-income assistance should be permitted to take generation services from competitive providers by applying a bill credit for generation services to the T&D company bill. The Commission requests comment on whether to require low-income program customers to be served from the standard offer.

VII. ENERGY POLICY AND THE ENVIRONMENT

A. Overview

The Maine Energy Policy Act (MEPA), the Small Power Production Act (SPPA), and the Electric Rate Reform Act (ERRA) embody Maine's energy policy concerning the production and sale of electric power. These statutes express Maine's policy to promote the use of indigenous and renewable resources, encourage energy efficiency and conservation, and balance short- and long-term costs and risks. State policies have been implemented through oversight and regulation of utilities' activities, including the production and sale of electric power.

In a restructured industry, the form and degree of regulation of power production and sale would be significantly different after January 2000. The extent the Commission directly

oversees energy resource use, pricing, and the construction of new generating facilities would be reduced or eliminated when competitive markets begin to provide generation services. For example, the Commission would no longer review least-cost planning and resource acquisition. However, because decisions about the production and use of electricity can have major long-term impacts on the State's environment and on its economy, the Commission would not abandon these decisions entirely to the market, at least not initially. Specifically, the Commission would ensure the continued development and use of renewable resource and demand-side management (DSM) technologies.¹³ Where practicable, the Commission would rely on market-based mechanisms to achieve the objectives, which should be reviewed as the market matures and eliminated when and if no longer necessary.

Increased competition and open access in the generation sector are likely to increase the operation of older, less efficient and more polluting fossil fuel plants. Unless this consequence is addressed, the result may be increased air pollution and a power market in which owners of more polluting plants have unfair economic competitive advantages.

¹³There are also ongoing efforts on behalf of the New England Governor's Conference to develop recommendations in this regard. To the extent possible, we will report on these recommendations in our December report to the Legislature.

B. Renewable Energy Resources

1. Minimum Renewable Supply Requirement

All retail providers of generation should be subject to a minimum renewable supply, or portfolio, requirement to ensure that renewable resource generation technologies continue to be developed and available in the marketplace. Generation service providers should be allowed to meet their renewables portfolio requirement by obtaining credits that may be traded among market participants.

This requirement limits the risk that the use of renewable resources to generate electricity would substantially diminish or fail to develop in a competitive market. Because renewable resource generation tends to have relatively high capital costs and (at the moment) higher direct costs generally, it may be difficult for renewable plants to compete with fossil plants in the near term.

The portfolio requirement/tradable credits approach ensures the continued use and development of renewable resource generation in a manner that reasonably comports with market principles. Renewable providers would compete among themselves to provide credits, and to the extent renewable generation proves to be cost competitive with fossil-fueled generation, the value of tradable credits will diminish, as will the cost of fulfilling the portfolio requirement. Ultimately, the portfolio requirement may become unnecessary as the cost of these resources approaches the market value.

The Commission would establish the renewable supply requirements by rule before January 2000. In that process, the Commission would consider provisions adopted by other states in the region and potential impacts on electric rates and Maine's economy. The Commission should periodically review the renewable supply requirements to ensure that the levels remain appropriate and that the requirement continues to be necessary and desirable.

2. Customer Choice

True retail choice may include a choice of power supply on the basis of fuel source. For example, a customer may want the ability to choose to buy power generated by wind or not to buy power generated by burning coal. The Commission requests comment on whether and how competitive energy providers should disclose the fuel or proportionate mix of fuels used to produce power.

C. Conservation and Load Management

Cost effective conservation and load management (C&LM) programs should be funded through electric rates until it appears likely that the market will provide them sufficiently. In the near term, the competitive market is unlikely to yield an optimal level of C&LM resources due to market barriers such as inadequate information, lack of access to capital and the short payback periods customers typically require.

Thus, C&LM programs, which are designed to lower electricity costs, should be funded through the rates of the T&D

companies. The Commission would establish initial funding levels, comparable to amounts in rates in the year 1999, in proceedings completed before January 2000.

The T&D company, with Commission oversight, should select the C&LM service providers through a periodic competitive bid process to ensure C&LM services are provided at the lowest cost. The Commission seeks comment on whether the T&D companies should be allowed to compete to provide C&LM services.

D. Long-term Resource Planning and Certification of Need

By regulating the construction of electric generating facilities, power purchases, and resource planning by electric utilities, the Commission has been a primary vehicle to execute state energy policy. As of January 2000, the Commission would no longer review the construction of generating facilities in Maine or the purchase of capacity and energy, or oversee utilities' long-term energy supply planning.¹⁴ Thus, the Commission recommends that the Legislature consider whether and how to review new power plant construction in Maine and the long-term planning and strategies used to meet Maine's demand for electricity.

E. Air Emission Standards

Older, less efficient, and more polluting coal and oil plants may have a significant competitive advantage in the emerging power market. These plants tend to have lower total

¹⁴The Commission would maintain its existing certification authority over transmission.

costs, but higher heat rates and higher emission rates than newer plants. Many older plants were grandfathered with respect to stringent New Source Performance Standards of the Clean Air Act because at the time Congress enacted the Clean Air Act (CAA) these plants were expected to be retired soon. However, in the developing competitive power market, such plants are not likely to be retired soon, and may actually increase their production. The market is likely to seek power from plants whose costs are lowest in the short-run; these plants appear to be prime candidates. Investors may perceive these plants to be less risky than new construction, further contributing to delays in their being displaced by new plants.

This could create two problems. First, it could exacerbate air quality problems. Second, market participants who own these plants would have an unfair competitive advantage because of their grandfathered status, and new entrants to the competitive market could be hindered. Thus, benefits to consumers from competition would be delayed, and air pollution would increase.

The Northeast region is likely to be particularly disadvantaged because coal plants in the Midwest will likely face increased demand for their power. This increased demand would cause these plants to expand their production, resulting in higher levels of emissions of NO_x , SO_2 and CO_2 . If these events occur, it would be difficult for generators in the Northeast to compete with these low cost plants. Moreover, the increase in

emissions from Midwest coal plants may have significant impacts on Maine's air quality and would increase the cost of compliance with the CAA.

The Commission supports the application of emissions standards that minimize differentiation between old and new source generating plants. Because this problem extends beyond Maine's borders, the Commission will continue to work with other states and federal agencies. The Commission seeks comment on the standards that should be applied to generating facilities, how standards should be implemented, and whether to implement standards for Maine generating facilities independent of other states' or federal action.

Finally, the Commission requests comment on whether a state entity should review the environmental effect of energy policy during and after the transition to a competitive market.

VIII. STRANDED COSTS

A. Overview

Certain costs and obligations incurred by utilities to fulfill their legal obligation to provide electricity service are potentially unrecoverable, or stranded, when Maine's electric generation markets are opened to retail competition. These costs and obligations fall into two general categories: (1) above market fixed costs associated with utility-owned generation plants; and (2) above market costs associated with generation-related contracts, most notably purchased power contracts with QFs. To the extent these costs are not reasonably

mitigatable, the Commission would allow utilities a reasonable opportunity to recover them. Specifically, these costs should be recovered by T&D utilities through regulated rates.

In addition, utilities' cost to provide service may be stranded by other types of bypass, such as self-generation or fuel switching. These are bypass options that exist under the current regulatory framework and will continue to exist after the generation market is open to competition at the retail level. To the extent this bypass is uneconomic or inefficient, it is relevant in electric restructuring because of possible adverse impacts on the competitive power market. A primary objective of restructuring is to establish efficient and fair competition in electric generation. The simultaneous presence in the market of competitive options that do not require stranded costs to be paid with options that do require payment may be inconsistent with this objective. The Commission should therefore explore the use of rate designs that recover stranded costs through charges that are less than fully usage-sensitive. The Commission would also conduct a more general proceeding prior to retail access to determine appropriate rate structures (for rates charged by the T&D companies) within a restructured industry. The rate structures or recovery mechanism(s) ultimately adopted may limit the potential for

uneconomic bypass to occur and the extent to which customers can strand costs by exercising options such as self generation.¹⁵

B. Cost Recovery by Utilities

Electric utilities should have a reasonable opportunity to recover legitimate and verifiable costs incurred or associated with obligations incurred prior to March 1995 which may be stranded as a result of industry restructuring.¹⁶ To the extent feasible, the Commission would design the recovery mechanism to provide a recovery opportunity comparable to that which currently exists. In determining the level of stranded costs to be recovered, the Commission would require utilities to mitigate stranded costs to the greatest extent possible. The Commission would develop and implement incentive or other mechanisms to ensure utilities meet this requirement.

Historically, utilities have had a legal obligation to provide adequate and safe service, at just and reasonable rates, to all persons within exclusive geographic service territories.

¹⁵The Commission currently has a case pending before it relating to the imposition of exit fees to recover stranded costs from self generators (Docket No. 96-187). Therefore, we express no opinion on the use of exit fees for this purpose at this time. The pending case is expected to be completed before our final report is provided to the Legislature; we may discuss the use of exit fees in that report.

¹⁶In our Order Commencing Rulemaking in *Re: Recovery of Stranded Cost Rulemaking*, Docket No. 95-055 at 10 (Feb. 27, 1995), we stated that utilities, rather than customers, would bear the primary market risk of costs incurred in the future. This was reaffirmed in our Order Terminating Rulemaking, Docket No. 95-055 at 3-4 (April 18, 1995). By this statement, we do not mean to imply that utilities will not recover costs of buying out or modifying existing power contracts.

The obligation to serve prohibited utilities from refusing to serve any customer and required utilities to have adequate capacity to meet existing and future demand. The obligation to serve in return for exclusive service territories is commonly called the regulatory compact. Industry restructuring would, in effect, modify this compact. The question of recoverability of stranded costs is whether, in a restructured industry, utilities should have an opportunity to recover costs prudently incurred in fulfilling their obligations under the pre-existing regulatory framework.

To satisfy their legal obligations, electric utilities have invested capital in long-lived generation plants and entered long-term power contracts. These commitments were undertaken pursuant to a regulatory structure which includes rules and policies for the recovery of utility costs. The recovery in the future of costs incurred under the existing regulatory framework should be consistent with the rules and principals that existed at that time the obligations were undertaken. In a restructured industry, government is allowing retail competition in what has been (for the most part) exclusive service territory of utilities. It would be a violation of fundamental fairness, poor public policy and perhaps unlawful for government to change the rules of regulation and cost recovery in a way that precludes recovery of

costs incurred by utilities under a previously existing set of rules.¹⁷

This does not imply that utilities are free of all responsibility for incurring uneconomic costs, or that utilities are entitled to recover in full all uneconomic costs. The costs most directly at issue in this draft, however, are those that would be stranded primarily by governmental action through the relatively abrupt elimination of exclusive service territories. Costs that may be stranded by events other than industry restructuring (e.g., self-generation, competition from other fuels, discount pricing) raise different issues with respect to utility cost recovery. The fundamental difference is that these costs are not stranded as a direct result of governmental change in regulatory rules, but by general economic forces. The question of recovery of these costs should also be based on sound principals consistent with the risks and benefits of the existing regulatory structure.

Utilities should have an opportunity to recover stranded costs, not a guarantee. In addition, through stranded cost determinations and regulation of the T&D companies, utilities would be given strong incentives to mitigate these costs. Finally, to the extent restructuring increases the certainty of cost recovery relative to the existing structure,

¹⁷While not directly applicable, the recent United States Supreme Court decision in *United States v. Winstar Corp.*, ___U.S.___ (July 1, 1996) suggests, at least, that government should act responsibly in changing the "rules of the game."

the Commission would consider reducing the amount of recoverable cost to reflect the reduction in risk to the utilities.

C. Determining Stranded Costs

The Commission would establish by January 2000, estimates of strandable generation costs for each of Maine's electric utilities.¹⁸ The Commission would develop these estimates in the context of public proceedings in which all stakeholders may participate. The estimates would provide the basis for stranded cost charges to be effective as of the date of retail access. The Commission would re-examine and adjust these estimates and related stranded cost charges prospectively during the year 2002 or 2003 and again in 2006, after the utilities complete divestiture.

The Commission would determine stranded costs administratively. In establishing the level of stranded costs to be recovered, the Commission would consider many factors including, but not limited to: market valuations that become known as particular plants are divested and QF contract output rights sold; current and likely future regional market prices for power; stranded cost determinations in other states in the region; and opportunities and incentives to maximize the value and minimize the stranded costs of generation assets and

¹⁸Pursuant to L.D. 1063, the Commission is required to provide a range of stranded cost estimates associated with our plan. We will provide our initial estimates, including underlying methodology and assumptions, to interested persons for comment before submitting our final report to the Legislature.

contracts.

For stranded costs associated with QF contracts, for which the right to market the output would be put out to bid periodically, the Commission would re-examine the reasonableness of the associated stranded cost estimates each time the right to market the output of the QFs sold. If warranted, the Commission could prospectively adjust stranded cost charges associated with remaining QF contract obligations.

Periodically re-examining stranded cost estimates will reduce the risk of establishing recovery levels that are grossly too high or too low. The purpose is neither to guarantee dollar-for-dollar recovery, nor to reflect minor fluctuations in value. Any adjustments to stranded cost charges resulting from these periodic re-examinations would be prospective. Stranded cost recovery would not be reconciled or trued-up to reflect past "actual" values. Such dollar-to-dollar reconciliation could weaken incentives to mitigate stranded costs and delay the arrival of the benefits of competition.

D. Recovery Mechanism

The stranded cost liability would reside with the regulated T&D companies and be collected as part of the regulated rates. These are costs related to obligations incurred by a regulated monopoly utility. Thus, it is reasonable that they be similarly recovered. The alternative to placing stranded costs with the T&D companies would be for the costs to reside with the competitive generation companies. Placing the costs with the

generation companies could distort the market by creating a group of companies with advantages or burdens neither available to nor imposed upon competitors.

The stranded cost charges would be imposed on all customers connected to the grid. The Commission would determine the specific level and design of the charges in a rate structure proceeding before 2000. Generally, stranded cost charges should be nonbypassable and designed to balance efficiency and equity objectives and encourage choices among competitive generation options on the basis of economic costs. The Commission would examine recovery mechanisms designed to recover stranded costs through charges that are less usage sensitive than per kWh charges, such as per maximum kW charges or flat access charges. The choice of any particular rate structure to recover stranded costs will also depend on the magnitude of the costs to be recovered, and the period over which recovery will occur.

IX. REGIONAL ISSUES

A. Overview

Certain issues cannot be resolved effectively by Maine as an individual State, but must be addressed on a regional level or before the Federal Energy Regulatory Commission (FERC.)¹⁹ These relate generally to the reliability of regional bulk power and transmission systems, and the fair and efficient operation of

¹⁹The term regional, as used herein, generally refers to New England.

the regional power market. The Commission, through involvement with the New England Conference of Public Utility Commissioners (NECPUC), the New England Governor's Conference, and with Maine's electric utilities has been participating in the current efforts to resolve these issues and we will continue to do so. This section provides the Commission's views of the key regional issues.

In the New England region, power is already regularly bought and sold in a wholesale market. The rules of the New England Power Pool (NEPOOL), for the most part, govern this market. NEPOOL, which comprises more than 100 utilities in the region, has major responsibilities for planning and operating the region's generation and transmission facilities to ensure load is served reliably and economically. NEPOOL is organized and operates according to an agreement of the member companies and is under FERC jurisdiction. Historically, NEPOOL's membership has been limited to utilities, and its control dominated by the largest among the member utilities.

State Commissions have two formal ways to influence NEPOOL: (1) state regulation of the member companies within each state's jurisdiction; and (2) participation in FERC proceedings either individually or with other New England Commissions. In addition, we may communicate our views about various regional issues to NEPOOL in less formal manners. We will continue to

pursue informal and, if necessary, formal approaches to help ensure that these regional issues are resolved adequately.

B. Reliability

Maintaining the reliability of the electric power system is critically important. Restructuring should not be allowed to result in a degradation of the reliability of the regional power system. The current industry standard for bulk power system reliability, set by the North American Electric Reliability Council (NERC), is that there should be no more than one day in ten years that load cannot be served because of inadequate transmission or generation resources. New England should maintain this level of system reliability, at least through a transition period. There has been no demonstration that this standard should be modified or that market forces could solely determine adequate levels of reliability. All competitors that provide power in Maine should be required to conform to the reliability standards set for the region.

Traditionally, utilities in the region have cooperated to maintain system reliability by sharing information on matters such as potential load growth, system constraints, and construction plans. The vertical monopoly structure of the industry has aided this cooperation. In a competitive environment, entities are likely to be less forthcoming with information. This may put the reliability of the system at increased risk. The Commission will

work to ensure the creation of regional structures to make competition compatible with system reliability.

C. Market Functioning and Market Structures

1. Independent System Operator (ISO)

The region's integrated bulk power system requires an operator to ensure the coordination of generation and load. In New England, the system operator oversees the generation and transmission resources of all companies within NEPOOL to ensure reliability criteria are met and the costs of serving the aggregate pool load are minimized. Currently, the New England Power Exchange (NEPEX), an arm of NEPOOL, performs this function. To the extent the system operation function is directly linked to the financial interests of market participants (as is currently the case), the tasks may not be performed in a competitively neutral manner.

Therefore, the Commission supports creating an ISO with no financial interest in the success or failure of any particular market participant. This view appears to be emerging as a consensus in the region, shared by regulators, non-utility market participants and NEPOOL's utility members. The Commission will continue to encourage the establishment and implementation of an independent ISO.

2. Transmission Access

A healthy competitive market for generation depends on the availability of transmission services at non-discriminatory terms and prices. The FERC has made clear its

requirements in this regard. There are ongoing efforts to establish the framework and rules for a Regional Transmission Group (RTG) in New England to implement the FERC's mandates. The Commission has been and will continue to participate in these efforts and, if necessary, in related FERC proceedings.

Because there are a number of separately owned transmission systems over which power flows in New England, there are difficult issues regarding how the region's transmission services should be administered and priced. Prices for transmission should be set to recover the transmission provider's cost of service and to encourage the efficient use and expansion, if necessary, of the regional bulk power system. Existing pricing systems that discriminate or otherwise artificially favor the purchase of power from one generation unit above another (e.g., Pool-planned Unit-EHV rates) should be phased out. The Commission will continue its effort to ensure that the rules and prices governing transmission in the region are consistent with fair and efficient market competition and that they do not unduly disadvantage sellers or buyers in Maine.

3. Power Exchange

A competitive market may require the creation of certain market structures to facilitate its operation and to provide participants adequate information with which to make informed and economic choices. In the emerging market, at least initially, a power exchange should be created to serve as a market clearing mechanism and a provider of price information,

preferably in real time. Participation in the power exchange would be voluntary, and other power exchanges or similar mechanisms could evolve and either co-exist with or replace this exchange. The power exchange could be part of the same organization that provides the ISO services, though some have suggested that the power exchange should be fully independent.

4. Governance Issues in NEPOOL Reform

An essential feature of any entity that controls or influences how the regional market will operate is meaningful and fair representation for all market participants. Discussions are ongoing that would modify the existing NEPOOL Agreement to attempt to accommodate a more competitive and open generation market. Although the NEPOOL Agreement was recently amended to allow pool membership for non-utility entities such as power marketers, brokers, and non-utility generators, this membership does not include any voting rights for these new members. Because non-utility members currently lack voting rights, the formation and implementation of necessary changes to regional structures could be delayed, which could reduce or delay the benefits of competition. The Commission has participated in and monitored the progress of NEPOOL restructuring discussions thus far, and will continue to work toward a system that provides meaningful and fair representation for non-utility market participants.

D. Horizontal Market Power Study

There is a risk that certain market participants will control a large enough share of the region's power supply to allow them to exert undue influence over market prices. In that event, restructuring could disadvantage consumers.

To the extent possible, care should be taken up front to minimize opportunities for horizontal market power. Ex-post anti-trust enforcement is inadequate to address market power problems and could consume substantial resources of both market participants and government agencies. The Commission recommends that the Legislature direct appropriate state agencies, including the Commission, to study regional power market and recommend steps to minimize market power opportunities before the date of retail access.

PUBLIC UTILITIES COMMISSION
Draft Plan
Electric Restructuring

RETAIL ACCESS

- * All customers in Maine would have the option to choose alternative generation providers beginning in January 2000.
- * All customers would be permitted direct access to generation providers.
- * Customers could voluntarily aggregate in any manner.
- * Periodic reviews would be conducted prior to 2000 to resolve implementation issues, review progress in other jurisdictions, and consider any necessary changes to the restructuring plan.
- * Reciprocity based on retail access in other states or Canadian provinces would not be a condition in Maine.

INDUSTRY STRUCTURE

- * Investor-owned utilities would be required to structurally separate generation by January 2000.
- * Investor-owned utilities would be required to divest all generation assets by January 2006 (further comment requested with respect to MPS).
- * Investor-owned utilities would be required to transfer right to market output of all QF contracts by January 2000.
- * By a date certain, investor-owned utilities would file divestiture plans for Commission review and approval.
- * Municipal utilities and cooperatives would not be subject to separation and divestiture requirements.
- * QF contract legal obligations would be unaffected by restructuring plan.
- * QF contract legal obligations would remain with T&D companies.
- * Maine Yankee decommissioning liability would be collected in rates of T&D company.
- * T&D companies would remain regulated public utilities

with obligation to provide system access within pre-existing service territories.

- * T&D companies and their affiliates should not own generation assets or produce and sell electric power after January 2006.
- * Provision of generation services would not be regulated as a public utility service but would be subject to limited Commission oversight in specific areas.

STANDARD OFFER

- * Standard offer service would be provided for those customers who do not choose an alternative generation provider and for those customers who cannot obtain service on reasonable terms from the market.
- * Standard offer service would be provided through competitive bids. Prior to a request for bids, Commission would determine the terms, requirements, and restrictions of the standard offer service.
- * The competitive bid process would be conducted by each T&D company subject to Commission review and approval.
- * The request for bids would contain a cap so that the retail price for generation service combined with the regulated rates of the T&D company will not exceed the bundled rate for electricity prior to retail access.
- * If the event that the standard offer generation service combined with the regulated rates of the T&D company cannot be provided at or below the bundled rate for electricity prior to retail access, the Commission should reconsider the plan and timetable for retail access.

CUSTOMER PROTECTION

- * Credit, collection, and disconnection rules of the T&D companies would be subject to regulation by the Commission.
- * The Commission would have authority to resolve customer complaints with respect the service of the T&D companies.

- * T&D companies would not have authority to disconnect for non-payment of charges for generation services from competitive providers.
- * Credit, collection, and disconnection rules with respect to the standard offer would be subject to regulation by the Commission.
- * The Commission, at least through a transition period, would have limited oversight over generation providers, including authority to resolve specific types of disputes with respect to interactions with customers.
- * Unless specifically authorized by the terms of Commission rules, upon termination by generation providers, service would continue uninterrupted from the standard offer.

LOW INCOME ASSISTANCE

- * The Commission recommends that the Legislature fund low income assistance programs through either the general fund or a tax or a surcharge on all energy services.
- * In the event low income assistance is not funded through taxes, low income programs would continue to be funded by ratepayers through the rates of the T&D companies.
 - Initial funding levels would continue at a comparable level to that existing at the time retail access commences. Funding levels and the terms of low income programs will be subject to Commission review and approval.
 - All T&D companies would be required to provide comparable low income assistance programs.
 - Low income assistance programs would be administered by the T&D companies in consultation with appropriate state and local agencies.
- * Participants in low income programs would not be required to take service from the standard offer.

ENERGY POLICY AND THE ENVIRONMENT

Renewable sources

- * All retail generation providers would be subject to a minimum renewable supply requirement.
- * The Commission would establish the minimum renewable requirement by rule, subject to an analysis of activities in other states in the region and the potential impacts on Maine.
- * Generation providers would be allowed to meet minimum renewable requirements by obtaining credits that can be traded among market participants.
- * The minimum renewable requirement would be subject to periodic review by the Commission to determine whether it remains necessary or desirable.

Conservation and Load Management

- * Conservation and load management would be funded through the rates of the T&D companies, at least through a transition period.
- * The initial funding level would be comparable to the amount that is in the bundled rates of electricity prior to retail access.
- * The conservation and load management programs would be provided through a periodic competitive bidding process conducted by the T&D companies and subject to Commission review and approval.

Siting and certification

- * The Commission would maintain its existing authority to review and approve the construction, purchase, or sale of transmission capacity.
- * The construction of generating facilities would not require Commission review or approval or need assessment.

Environmental risk

- * The Commission supports the application of air emissions standards that minimize differentiation between old and new source generating plants to

avoid uneconomic competitive advantages and environmental damage resulting from industry restructuring. The Commission will work with other states and federal agencies to accomplish this goal.

STRANDED COSTS

- * Utilities would be provided a reasonable opportunity, comparable to that which exists under current regulation, to recover generation-related costs stranded as a result of retail access.
- * Utilities would be required to take all reasonable steps to mitigate strandable costs.
- * The Commission would determine the generation-related stranded costs that exist as of January 2000. The amount would be reviewed and subject to adjustment until 2006. In 2006, the stranded costs associated with generation assets would be fixed. The stranded costs associated with QF contracts would be subject to adjustment on a periodic basis until contract termination.
- * The T&D company would have the stranded cost liability and recover the costs through its regulated rates.
- * No generation costs or obligations incurred after March, 1995 would be recovered through regulated rates as stranded costs.
- * The Commission would conduct a rate structure proceeding prior to January 2000 to determine economically efficient and equitable rates for the recovery of stranded costs.

REGIONAL ISSUES

- * The Commission endorses reforms to the governance of NEPOOL that will allow fair and equal representation for all market participants.
- * The reformed NEPOOL should establish criteria to assure that the NERC reliability standards are maintained.
- * The Commission endorses the establishment of an Independent System Operator to be responsible for the day-to-day operations of the transmission system and have no financial interest in transmission, generation, or market transactions.

- * The Commission endorses the establishment of power exchange that can be either independent or part of the reformed NEPOOL. Participation in the exchange should be voluntary. Bilateral contracts should be permitted. After a transition period, the requirement for a power exchange may be terminated as market mechanisms develop.